the public need and convenience. The facts disclosed here are so different from those involved in the numerous authorities cited by appellant as to make those authorities of little value in this case.

No absolute rule, as is contended for by appellant, can be laid down, but each case, of necessity, must be considered and determined on its merits.

The existence of a remedy at the suit of the Superintendent of Public Works for an annulment of the charter is not exclusive of the remedy invoked here. Some violations of charter obligations might warrant a forfeiture, but so harsh a remedy would be granted with great reluctance, and should be sought only when clearly necessary.

Under the franchise the company owed a specific duty to the public, enforceable through the courts. Section 7 of the franchise (§ 841, Rev. Laws) was properly construed by the territorial courts, and their construction was thoroughly consistent with the provisions as to executive control of regulations made by the company.

The local courts refused to accept the technical construction given these sections of the franchise by appellant which would limit them in meaning to such an extent as to give the public no redress through the courts for any act of the company's, but on the contrary correctly gave these sections a broad and comprehensive construction which would permit the public, which granted this franchise, to come into court and require by appropriate means a performance of corporate duty. This construction by the local courts is entitled to great weight in this court. *Kawananakoa* v. *Polyblank*, 205 U. S. 349; *Copper Queen Mining Co.* v. *Arizona*, 206 U. S. 474; *Kealoha* v. *Castle*, 210 U. S. 149, 153.

Mr. Justice Moody delivered the opinion of the court.

The appellant, hereafter called the Transit Company, was incorporated by a law of the Territory of Hawaii. Chapter 66,

§§ 835–871, Revised Laws of Hawaii. The corporation was granted the right to construct and operate a street railway for a term of thirty years in the District of Honolulu. The character of the construction was, in part, expressly prescribed by the statute, and, in some details, left to be determined by the Transit Company, subject to the approval of the Superintendent of Public Works. Section 841 enacted that—

"The said association . . . shall at all times maintain a sufficient number of cars to be used upon said railway for the carriage of passengers as public convenience may require, and such other cars designed for the carriage of mails, parcels and goods as they may deem necessary."

It was provided that, after paying from the income certain charges, including a dividend of eight per cent on the stock, the excess of the income should be divided equally between the Territory and the stockholders, and that "The entire plant, operation, books, and accounts . . . shall from time to time be subject to the inspection of the Superintendent of Public Works." Section 868. In certain parts of the field of operation a maximum rate of fare was established by the statute, and in certain other parts it was left to the Transit Company to fix, subject to the approval of the Governor. It was provided by § 843, paragraph 4, that—

"The said association . . . shall make reasonable and just regulations with the consent and approval of the Governor regarding the maintenance and operation of said railway on and through said streets and roads; and the said association . . . failing to make such rules and regulations, the Superintendent of Public Works, with the approval of the Governor, may make them. All rules and regulations may be changed from time to time as the public interests may demand at the discretion of the Governor."

The railway was constructed and its operation was in progress. On certain streets of its line the Transit Company had been running cars at intervals of ten minutes. It proposed to discontinue this schedule and establish one with

somewhat longer intervals, and had applied to the Superintendent of Public Works for permission to lay the switches necessary to put the proposed schedule into convenient operation. Thereupon the Territory, on the relation of its Attorney General, brought, in one of the Circuit Courts of the Territory, a suit in equity, in which an injunction was sought to prevent the company from running the cars in question at less frequent intervals than ten minutes. In the bill it was alleged that the convenience of the public required that the ten-minute schedule should be maintained and continued. The respondent answered, issue was joined by replication, evidence was taken, and the court found as a fact that the public convenience required the maintenance of the ten-minute schedule. An injunction against the change was accordingly granted. Upon appeal to the Supreme Court of the Territory the judgment of the lower court was affirmed, and findings of fact made, including the finding that the public convenience required the continuance of the ten-minute schedule. The Transit Company then appealed here, upon the ground, which is well taken, that the amount in controversy was more than five thousand dollars.

The dispute between the parties is whether the courts of the Territory had jurisdiction in equity to issue the injunction. The Transit Company contends that no such jurisdiction existed, and, in the alternative, that if there was jurisdiction in the courts over the subject it could only be exercised by mandamus. We think it unnecessary to consider the latter proposition, and confine ourselves to a consideration of the broad question whether the court had power, by any form of proceedings, thus to regulate and control the operations of the company. The courts below based the right to issue the injunction upon § 841, correctly interpreting that section as imposing the general duty upon the Transit Company to operate as well as to maintain such cars as the public convenience require. The section, however, is not a specific direction to keep in force on the streets covered by the order

of the court a defined schedule, with cars running at named intervals, and the right of a court to enforce by injunction or mandamus such a schedule need not be considered. But the action of the court below went much farther than this, and farther than is warranted by any decision which has been called to our attention. In the absence of a more specific and well-defined duty than that of running a sufficient number of cars to meet the public convenience, the court, in this case, inquired and determined, as matter of fact, what schedule the public convenience demanded, on particular streets, and then, in substance and effect, compelled a compliance with that schedule. And this was done, though, as will be shown, the full power to regulate the management of the railway in this respect was vested by the statute in the executive authorities. In form the order of the court was a mere prohibition against a change of an existing schedule, but its substantial effect was to direct the Transit Company to operate its cars upon a schedule found to be required by the public convenience. The effect of the order is not changed by the fact that the schedule enforced by the order of the court is that upon which the Transit Company was then running its cars. The order of the court was not founded upon the consideration that the schedule was the one existing, although that was taken into account, but upon the fact that it was the one which the public convenience required. The question to be determined is, whether a court, not invested with special statutory authority nor having the property in its control by receivership, may, solely, by virtue of its general judicial powers, control to such an extent and in such detail the business of a transportation corporation. The question can be resolved by well-settled principles applicable to the subject. At the threshold the distinction between the case at bar and those cases where there is an enforcement of a specific and clearly defined legal duty must be observed. This distinction was drawn and acted upon in the case of *Northern Pacific Railroad* v. *Dustin*, 142 U. S. 492. In that case it appeared that the railroad com-

pany was incorporated by an act of Congress, with power to construct and operate a railroad from Lake Superior to Puget Sound, with a branch to Portland. The charter directed that the railroad should be constructed "with all the necessary . . . stations." The Territory of Washington filed in the territorial court a petition for mandamus to compel the railroad company to erect and maintain a station at Yakima City and to stop its trains at that point. The petition alleged, and the jury found, facts which warranted the inference that a station at Yakima City was desirable and necessary for the proper accommodation of traffic. Thereupon a writ of mandamus issued as prayed for and upon appeal the judgment was affirmed by the Supreme Court of the Territory. Upon writ of error this court reversed the judgment. In the opinion of the court, delivered by Mr. Justice Gray, it was said: "A writ of mandamus to compel a railroad corporation to do a particular act in constructing its road or buildings, or in running its trains, can be issued only when there is a specific legal duty on its part to do that act, and clear proof of a breach of that duty." And the charter direction, that the railroad should construct all necessary stations, was described as "but a general expression of what would be otherwise implied by law," and as not to "be construed as imposing any specific duty or as controlling the discretion in these respects of a corporation entrusted with such large discretionary powers upon the more important questions of the course and the termini of its road" (p. 500). Accordingly it was held that the determination of the directors with regard to the number, place and size of the station, having regard to the public convenience as well as the pecuniary interests of the corporation, could not be controlled by the courts by writ of mandamus. And see *People* v. *Railroad Co.*, 172 N. Y. 90.

The business conducted by the Transit Company is not purely private. It is of that class so affected by a public interest that it is subject, within constitutional limits, to the governmental power of regulation. This power of regulation

may be exercised to control, among other things, the time of the running of cars. It is a power legislative in its character and may be exercised directly by the legislature itself. But the legislature may delegate to an administrative body the execution in detail of the legislative power of regulation. *Reagan* v. *Farmers' Loan & Trust Co.*, 154 U. S. 362, 393, 394; *Interstate Commerce Commission* v. *Cincinnati, New Orleans & Texas Pacific Railway Company*, 167 U. S. 479, 494. We need not consider whether that legislative power may be conferred upon the courts of the Territory, as it may be upon the courts of a State, so far as the Federal Constitution is concerned. *Prentis* v. *Atlantic Coast Line Co., ante*, p. 210. In this case the legislative power of regulation was not entrusted to the courts. On the contrary, it was clearly vested, by § 843, in the Governor and the Superintendent of Public Works. By that section the Transit Company was itself given authority, in the first instance, with the approval of the Governor, to make reasonable and just regulations regarding the maintenance and operation of the railway through the streets. The operation of a railway consists very largely in the running of cars, and the right of the Transit Company, to regulate, in the first instance, the operation of its railway clearly includes the power to decide upon time schedules. But the company cannot finally determine, as it chooses, the manner of operating its road in respect of the time, speed and frequency of its cars. Its primary duty is to operate a sufficient number of cars to meet the public convenience. This duty would rest upon the company, even if it were not expressed, as it is, in § 841. If the company itself complies with its duty by just and reasonable regulations of its own, it is enough. If the company fails in the performance of the duty, its performance is secured in the manner pointed out in the latter part of § 843. The Superintendent of Public Works may make, with the approval of the Governor, just and reasonable regulations, and they may be changed from time to time, as the public interests may demand, at the discretion of the Governor. Moreover, by an

amendment of the charter (Act 78, Session Laws 1905), the Superintendent of Public Works may prescribe the speed of cars. The precise function, therefore, which was exercised by the courts below is by the statute, confided primarily to the Transit Company, and ultimately to the discretion of the Governor and Superintendent of Public Works. The courts have no right to intrude upon this function, and subject the company to a species of regulation which the statute does not contemplate. If the courts were held to have the powers which were assumed in this case it would lead to great embarrassment in the operation of the railway, and perhaps to distressing conflict. Can it be that the courts can dictate the frequency of the running of the cars, and the Superintendent of Public Works their speed? If so, the lot of the company is indeed a hard one. The two incidents of operation are not only related, but inseparable. The authority which controls the one must control the other, or operation becomes impossible. Suppose, again, that the courts, upon hearing evidence, should be of opinion that one schedule is required for the public convenience and the Governor and Superintendent of Public Works should be of opinion that another schedule would better subserve that convenience, which order must the company obey? Must it choose between the liability to punishment for contempt for disobeying the order of the court and the liability to forfeiture of its franchise for failing to obey the order of the Governor and Superintendent of Public Works? [1] These and other like situations, which easily might

[1] Sec. 870. "Whenever the said association or any corporation which may have been duly organized under the laws of this Territory for the purpose of constructing, operating, and maintaining the lines of railway mentioned in this chapter, and as by this chapter provided, refuses to do or fails to do or perform or carry out or comply with any act, matter or thing requisite or required to be done under the provisions of this chapter, and shall continue so to refuse or fail to do or perform or carry out or comply therewith, after due notice by the Superintendent of Public Works to comply therewith, the Superintendent of Public Works shall with the consent of the Governor cause proceedings to be

be imagined, are signal illustrations of the importance of observing the boundaries between the judicial and legislative field, and of the confusion and injury which would follow from the failure to respect those boundaries. Nothing is decided as to the power of the courts to review the action of the Superintendent or Governor.

In our opinion, the injunction which was issued in this case, constituting in substance a regulation of the operation of the railway, was, in the first place, not within the limits of the judicial power, and, in the second place, totally inconsistent with the power of regulation vested unmistakably by the legislature in the executive authorities.

Decree reversed.

THE CHIEF JUSTICE dissents.